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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES OLIVER HAFLICH,

Defendant and Appellant.

F071623

(Super. Ct. No. 1483371)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Joseph R. Distaso, Judge.

Caitlin Christian, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Kane, J., and Detjen, J.

After a short jury trial, James Oliver Haflich was convicted of possession of a hypodermic syringe while in custody. In a bifurcated proceeding, the trial court found true the allegations that Haflich had suffered a prior strike conviction and had served a prior prison term. The trial court sentenced Haflich to a mitigated term of two years, which was then doubled because of the strike prior, for a total term of four years. The trial court struck the prior prison term enhancement.

Appellate counsel failed to identify any arguable issues. After thoroughly reviewing the record, we agree there are no arguable issues, and therefore affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The first amended information charged Haflich with possession of a hypodermic syringe while in the custody of the Stanislaus County Jail. (Pen. Code, § 4573.6.)¹ The first amended information also alleged Haflich had a prior conviction which constituted a strike within the meaning of section 667, subdivisions (b)-(i), and had served a prior prison term within the meaning of section 667.5, subdivision (b).

The matter proceeded to trial. The only witness was Stanislaus County Sheriff Sergeant Larry Kjellberg, who was assigned to the county jails. On the day in question a deputy called for assistance because numerous prisoners were congregating in a cell in violation of jail rules. By the time Kjellberg arrived, the prisoners were out of the cell, placed in handcuffs, and seated on a bench. Haflich was one of the prisoners. He was being loud, ignoring staff commands, and attempting to get the other prisoners agitated. Haflich was moved to a different bench where he would be isolated from the other prisoners.

¹ All statutory references are to the Penal Code unless otherwise stated.

Shortly thereafter, Kjellberg returned to his work station which allowed him to visually observe all of the prisoners, which he did while performing other tasks. Kjellberg observed the bench on which Haflich was sitting move away from the wall, and saw Haflich stick his hand between the bench and the wall and drop a black object onto the ground. Kjellberg and another deputy immediately ran to the bench and secured the object. As Kjellberg approached, he observed Haflich reposition himself on the bench and kick the item away. The item was a black latex glove inside of which Kjellberg located a hypodermic syringe.

Defense counsel attempted to cast doubt on Kjellberg's testimony by eliciting from him the fact that he did not search the area of the bench before Haflich was moved, none of the deputies observed anything in Haflich's hands as he was being moved, numerous prisoners had access to that bench on any given day, Kjellberg's view of Haflich was partially obscured by a laundry cart, and no attempt was made to obtain fingerprints or DNA from the syringe or the glove.

It came to light during Kjellberg's testimony that he had taken a picture from the area in which he was working directed at the bench on which Haflich was sitting. Kjellberg failed to provide it to the prosecutor because of the poor quality of the photo caused by shadows and reflections. Defense counsel moved for a mistrial asserting a violation of the prosecution's discovery obligations pursuant to *Brady v. Maryland* (1st Cir. 1963) 373 U.S. 83. Kjellberg retrieved the photo, which was very dark making it almost impossible to note any detail. The trial court denied the motion for mistrial, and defense counsel admitted the photo into evidence. The jury was informed by stipulation that Kjellberg did not provide the new photograph to the attorneys until the morning of trial.

The parties also stipulated that Haflich knew the syringe could be used to inject controlled substances, and that Haflich was in custody on the day in question.

The prosecutor argued that Kjellberg's testimony was direct evidence of the elements of the crime, while defense counsel argued Kjellberg's testimony was not believable for the reasons brought out during cross-examination. The jury deliberated for a little over an hour before finding Haflich guilty.

In a bifurcated proceeding, the trial court found both the prior strike enhancement and the prior prison term enhancement true. Prior to sentencing, Haflich moved to have both enhancements dismissed. The trial court denied the motion as to the prior strike enhancement, but granted the motion as to the prior prison term enhancement. The trial court sentenced Haflich to the low term of two years, and then doubled that term because of the strike prior for a total prison term of four years.

DISCUSSION

After a thorough review of the record, appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, asserting she could not identify any arguable issues in the case. By letter dated February 29, 2016, we invited Haflich to inform this court of any issues he wished us to address. Haflich did not respond to our invitation.

After reviewing the record, we agree with appellate counsel that there are no arguable issues in the case. Haflich was charged with a single count. There was only one witness during the trial. There were no objections noted to the jury instructions, which were straightforward. Closing argument was brief and limited to the evidence introduced at trial and how that evidence applied to the elements of the crime. Haflich was sentenced to the mitigated term, and the trial court struck the prior prison term enhancement.

The only potential issue was Kjellberg's failure to provide one photo to the prosecutor, and the corresponding failure of the prosecutor to provide that photograph to defense counsel. However, the photo was of such poor quality as to be virtually unusable, and the subject matter of the photo, the view of the bench from the work area in

which Kjellberg was working, was adequately covered by another photo which was provided to defense counsel. The photo which was not produced was not exculpatory in nature, so no discovery violation occurred.

DISPOSITION

The judgment is affirmed.